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WEDNESDAY, NOVEMBER 28, 1883.

PRICE, FIVE CENTS.

CUTTING TIMBER ON PUBLIC LANDS.

CIRCUIT COURT-DISTRICT OF OREGON.

FRIDAY, Nov. 23, 1883.

United States vs. Charles Williams, William Williams, B. J. Pengra-No. 932. Action for damages for cutting timber on the public land.

United States vs. Charles Williams B. J. Pengra-No. 933. Same.

1. Cutting timber on the public lands. Section 4 of the act of June 3, 1878 (20 Stat., 89), prohibits the cutting of any timber on the public lands with intent to dispose of the same; but the provise thereto permits a settler under the pre-emption and hometesd acts to clear his claim. and homstead acts to clear his claim as fast as the same is put under cal-tivation, and the timber cut in the course of such clearing may be dis-posed of by the settler to the best mi-

to dispose of the same and not merely as a means of preparing the land for tillage, he is a wilful trespasser and is liable accordingly.

3. Damages for cutting timber. The measure of damages in an action for cutting timber on public lands, in case the trespass is inadvertent and not wilful, is the value of the timber in the tree; but where the trespass is wilful, the value of the labor put up-on it by the trespasser must be added

the value in the tree, with interest thereon in either case.

4. Trespass by mistake. The defendant claimed to have taken up a homestead on the northwest quarter of section 22, of township 19, and while intending to cut saw logs thereon with intent to dispose of the same, did by mistake cut said logs on the northwest quarter, as he intended, it would have been a wilful trespass, and, therefore, his mistake was immaterial, and he was liable to the United States for the And set I kink the age of the purpose of disposing of tile parts of the purpose of disposing of tile parts. liable to the United States for the value of said logs as a wilful tres-

These actions are brought by the United States against the defendants to recover the value of certain timber unlawfully cut and removed from the public lands to a certain saw mill in Springfield, Lane county, Oregon, and there sawed into boards and converted to the use of the defendants, to the damage of the plaintiff in the sum of \$9,000, and in the second one of \$6,000.

In No. 932, it is alleged in the complaint that between April 1 and July 1883 there was ent and removed by the defendants therein, from what would be, if surveyed, the northeast quarter of section 22, in township 19 south, of range one west of the Wallamet meridian, 900,000 feet of tim-ber of the value of \$1,800; and in No. 933, between April 1, 1882, and No. 333, between April 1, 1

July 13, 1883, there was cut and removed from the same tract 600,000 feet of timber of the value of \$2,000.

U. S. 432, it was held by the sagarant

The defendants, Charles and William Williams, in case 932, answered jointly, admitting the cutting and removing by them to said saw mill, as the rule for measure them in alleged, of 200,000 feet of timber; lows (1) When the defendant and said Charles, in case 933, answered admitting the cutting and removing of 600,000 feet by him; and alleging in both cases that such cutting and removing was done by mistake as to the locality of said timber; that it was only worth twenty-five cents a thousand feet in the tree; and they bring into court in satisfaction of the damages thereby sustained by the plaintiff the sum of \$50 in the one case and \$150 in the other.

The defendant Pengra answered separately, denying the allegations of the complaint, and the actions were dismissed as to him. The cases were afterwards sub-

mitted to the court for trial without a jury, upon an agreed statement of the facts or evidence in the case.

From this statement it appears that section 23 of said township is unsurveyed, but it has not been public land since prior to 1881, and that at the time the defendants cut the timber on section 22 of said township. they had authority to cut and remove timber from said section 23; that said section 22 is public land, the west half of which was surveyed before this timber was cut thereon, and the line on the north side therof was run between it and section 15 and sections 23 and 14; that on May I, 1882, Charles Williams was and still is the owner of a tract of land—the quantity of which is not stated adjoining the northwest quarter of said section 22 and that it was a section 22 and that it w section 22, and that in said month of May said Charles "took up a homestead claim" thereon, as he supposed, but which was, in fact, on the north-west quarter of said section: that said northwest quarter section and the and so taken for a homestead were fit for tillage when the timber was re-moved, and said Charles took the lat-"for the purpose of preparing the same for tillage, and for that purpose removed therefrom in the spring and summer of 1882, 600,000 feet of timber, in good faith, for the purpose of preparing said land for tillage," and in neither case was said timber cut with any intention of trespassing on the public lands or taking timber refrom unlawfully; and that all of said timber was cut into logs on the land, and was worth twenty-five cents a thousand in the tree, and seventy five cents a thousand in the log and

Under the timber act of March 2. 1831 (4 Stat. 472, § 2461 R S.), the cutting or removal of any timber from the public lands, other than for the the public lands, other than for the use of the United States, was absolutely prohibited, under a penalty of not less than three times the value of the timber and imprisonment not except the timber and imprisonmen

ceeding twelve months. But the courts treated the pre-emption, homestead and mining acts, subsequently passed, as laws upon the
same subject, by which the latter act
was modified, so as to permit the
idea that the defendant was upon the
idea that the defendant was upon the
idea that the defendant was upon the

under these several year, to cut and local simply as a topper capaged in remove timber therefrom for the purposition out logs for the Springfield remove timber therefrom for the pur-poses for which they were thus occu-pied, but not otherwise. And the timber so cut might be supposed at rather than destroyed. U.S. va Nel-

ons of this art provide for of the unsurveyed public lands, vain-cable to by down my absolute able chiefly for timber, but unfit for as to how near the cultivation cure to be cut or wantenly deslrey any finder growing on any hand of remove or cause to be removed an timber from such public leads wit intent to export or dispute of the same, under pain of participated a nothing therein totall miner or agricultured from ch

farm for tillage, or Javan taking 2. Idem. But if such settler cuts timber on his claim with the intent provements."

This provise description is a provise description of the sum of the su

innels under the pre-watchism, house

By this proviso, congress in effect notwithstanding the general inder thereon in the ordinary comon it by the trespasser must be added to the value in the tree, with interest thereon in either case.

> timber thereon for the purpose of disposing of it by sale or otherwise. And yet I think the act of 1878 on hi to be construed as authorizing a set tler to dispose of timber which tion. Whatever timber it is necessary to cut to prejote the built for ellipse, the pritter ought to be allowed to dis-pose of it to the most adventage to

and the templation to do so is very strong. Therefore it ought not to be allowed except upon clear proof that the tillage or cultivation has been the chainful is entitled to necover the pace, nore by passe or field by field, value of the timber after it was out with the cutting and removal. Other into logs -\$450, with interest from wise the public lands will soon to pillaged of their valuable timber to contractors and candonesis mill men, working under the guise of preemptors and beautiful ders, But "tillinge" morena herela ry the cultivation of the land, pu-

court that in an action to damages for cutting and caway timber from the public wilful fresposser, the full value property at the time of h action, with no deduction labor and expense: (2) When fendant is an unint taken trespasser, the amount which a added to its value.

It is admitted that the timber from the public limb mistake, and therefore the sught to be confirmal to the

On the argument it was practically admitted by the coursel for the plaintiff that the timber cut by the defendants in the summer of 1981, was cut by saletake. But it is not opparent how the mistake was made nor is it shows that any points or core was taken to prevent or avaid the Metv Store, mistake. If the mistake was the result of carelessness or indifference, I do not think it is used a mistake a ought to excuse the defendants from pnying damnaes as wilful trespose Winchester v. Craig, 33 Med. 207. But the chaining that this two hundred thousand feet of timber was

demages on that account, with inte-rest from December 31, 1881.

The 600,000 feet cut upon the same tract in the summer of 1882 by the defendant, George Williams, was also out by mistake; that is, it was entupon the northeast quarter of section 22 instead of the northwest one, where it is stated be intended to "take up" a homostead in May of

that year.

Leaving out of consideration the fact that more or less of this timber was cut, probably a month before this homestrad is alleged to have been aken, the district attorney inside the there is no such mistake or inmiver tence in the case as will exense the defendant from the consequences:

a willful tresspor There is no fact or circumstance in the case tending to show that the de-fendant ever attempted in good fait! to make a farm on either the north east or west quarter section. Incidentally, it is mentioned in the state ment of facts that he built a bouse or the northeast quarter, but for augh to have made any application or field to any statement in the land office, evidencing his intention to make a

as actually on the northwest quar cable to by down any absolute rate NAILS AND SPIKES. cultivation. Section t provides "that keep to the chearing how close the after the passage of this set it shall plow shall follow the use, but it is ther thorough and that the timber was

cuts in good faith for the purpose of for the use of the timber by the clearing his land for present cultival miner and agriculturist who seith December 31, 1882 and if the cas cinted and gone as far as it might and

uses would have been the value of

the legs when delivered in the new



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